



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 27, 1997

The Honorable Bill Clayton
Chair, State of Texas Aircraft Pooling Board
4900 Old Manor Road
Austin, Texas 78723-4522

Letter Opinion No. 97-078

Re: Whether the state may build airport facilities for operations of Texas Aircraft Pooling Board on real property not owned by the state (ID# 39284)

Dear Mr. Clayton:

On behalf of the State of Texas Aircraft Pooling Board (the "board"), you request an opinion about the construction of airport facilities for the board's operations on real property where title is not held by the state. You state that the City of Austin (the "city") is in the process of relocating commercial aviation operations from Robert Mueller Municipal Airport ("Mueller") to the former site of Bergstrom Air Force Base ("Bergstrom"). The city wishes to have all aviation operations, including those of the state, move from Mueller to Bergstrom and has proposed that the board lease property at Bergstrom. You inform us that relocation to Bergstrom may require the state to undertake significant construction on leased property. You ask whether state law would permit construction on land not owned by the state, and whether the specific project in question is permissible.

The Aircraft Pooling Board is an agency of the state¹ charged with operating a pool for the custody, control, operation, and maintenance of all aircraft owned or leased by the state.² The following provision relates to the acquisition of facilities for its operations:

The board may acquire appropriate facilities for the accommodation of all aircraft owned or leased by the state. The facilities may be purchased or leased as determined by the board to be most economical for the state and as provided by legislative appropriations. The facilities may include adequate hangar space, an indoor passenger waiting area, a flight-planning area, communications facilities, and other related and necessary facilities.³

The board has express statutory authority to acquire facilities for the accommodation of aircraft by purchase or lease. We believe it has implied authority to arrange for the renovation or

¹Gov't Code § 2205.003.

²*Id.* § 2205.032(a).

³*Id.* § 2205.034.

construction of facilities on leased land,⁴ subject to the legislature's appropriation of funds for that purpose.⁵

It is well established that the Texas Constitution does not prohibit the state or a political subdivision from constructing improvements on leased property.⁶ Any expenditure of public funds for this purpose is subject to constitutional limitations and must be consistent with the relevant constitutional provisions. You refer in your letter to article III, sections 50, 51, and 52, and article XVI, section 6 of the Texas Constitution, which prohibit the loan or grant of public funds or the extension of public credit to individuals or corporations. These constitutional provisions do not prevent the state from spending its funds to carry out a public purpose, even if another entity incidentally benefits from the expenditure.⁷ Adequate consideration for the expenditure must flow to the public, and adequate controls, contractual or otherwise, must be in place to ensure that the public purpose will be carried out.⁸ The fact that improvements are to be constructed on leased property, and the terms of the lease, are relevant to the determination whether the state receives adequate consideration for, and retains adequate control over, the expenditure.

You also ask us to determine the constitutionality of a specific proposal for constructing aircraft facilities for the board on leased land. Whether a particular expenditure of public funds meets constitutional requirements involves questions of fact, which cannot be resolved in the opinion process.⁹ The determination whether the proposed expenditure serves a public purpose, whether adequate consideration flows to the public and whether there are sufficient controls to ensure that

⁴The construction of facilities for a state agency to use in carrying out its statutory functions implicates various statutes and legal issues. *See generally* Gov't Code ch. 2166 (construction of state buildings). You ask only about the constitutionality of building state facilities on leased land, and we limit our answer to that question. *See generally* Attorney General Opinion DM-436 (1997) (addressing additional issues on authority of Aircraft Pooling Board).

⁵*See* Gov't Code §§ 2166.251, 2205.035.

⁶*See* Attorney General Opinions JM-1030 (1989) at 3 (expenditure of public funds to improve realty owned by private parties), MW-290 (1981) (county may improve building acquired by lease), H-416 (1994) (grant or loan of state funds for construction or improvement of municipal airport located on leased land), H-403 (1974) (state agency may spend public funds to build, repair, or maintain improvements on leased property), M-512 (1969) (state agency may refurbish leased building); *see generally* *Jack v. State*, 694 S.W.2d 391 (Tex. App.—San Antonio 1985, writ ref'd n.r.e.) (dispute concerning state's lease of county property for purpose of constructing, maintaining, and operating public boat ramp and parking facilities).

⁷*Barrington v. Cokinos*, 338 S.W.2d 133, 140 (Tex. 1960); *State v. City of Austin*, 331 S.W.2d 737 (Tex. 1960).

⁸*See* Attorney General Opinions DM-317 (1995), JM-1146 (1990), JM-1030 (1989), MW-423 (1982).

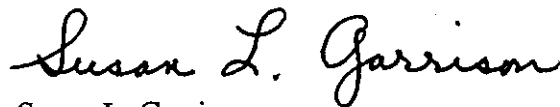
⁹Attorney General Opinions DM-394 (1996), DM-256 (1993) at 3, JM-1146 (1990) at 4.

the public purpose will be carried out is for the discretion of the board¹⁰ and the legislature in the first instance,¹¹ subject to judicial review.¹²

S U M M A R Y

State agencies such as the State Aircraft Pooling Board are not prohibited by the Texas Constitution from expending public funds to construct improvements on leased property, but the proposed expenditure must serve a public purpose, adequate consideration for its expenditure must flow to the public, and adequate controls, contractual or otherwise, must be in place to ensure that the public purpose will be carried out. These determinations involve fact questions and are for the discretion of the board and the legislature in the first instance, subject to judicial review.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee

¹⁰See Attorney General Opinion JM-1146 (1990) at 4.

¹¹Gov't Code § 2205.035 (board's purchase or lease of facilities to be provided for by legislative appropriations).

¹²Attorney General Opinions DM-394 (1996) at 2, DM-317 (1995), DM-256 (1993), JM-1030 (1989) at 4.